Choctaw Manufacturing Company, Inc. *and* Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC. Cases 15–CA–16699, 15–CA–16703, 15–CA–16705, and 15–CA–16755

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment[1] in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and amended charges filed by the Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC, the Union, between August 2, and October 16, 2002, the General Counsel issued the consolidated complaint on November 29, 2002, against Choctaw Manufacturing Company, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the Act. The Respondent failed to file an answer.[2]

On February 21, 2003, the General Counsel filed a Motion for Summary Judgment with the Board and Memorandum in support. On March 5, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 5, 2003, notified the Respondent that unless an answer were received by February 14, 2003, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Silas, Alabama, has been engaged in manufacturing apparel.

Annually, the Respondent, in conducting its business operations described above, purchases and receives at its Silas, Alabama facility goods valued in excess of $50,000 directly from points outside the State of Alabama, sells and ships, from its Silas, Alabama facility goods valued in excess of $50,000 directly to points outside the State of Alabama, and derives gross revenues in excess of $500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act

R. Malcolm Utsey	President
Randy Utsey	Manager
James Giles	Plant Manager
Becky Hollis Mazingo	Supervisor
Mary Hill	Supervisor
Lois Trailor	Supervisor
James Agee	Supervisor

About August 8, 2002, the Respondent, by Lois Trailor, at the Respondent's facility: (1) informed employees that doctor-excused and personal day absences would not be accepted for absences occurring on August 12, 2002, to prevent employees from engaging in activities on behalf of the Union; and (2) threatened to termi-

[1] The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

[2] The General Counsel's motion indicates that the Respondent has filed a petition for bankruptcy. It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id.; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

nate employees if they engaged in activities on behalf of the Union.

About August 8, 2002, the Respondent, by Becky Hollis Mazingo, at the Respondent's facility: (1) threatened employees with closure of the Respondent's facility if employees engaged in activities on behalf of the Union; and (2) threatened to terminate employees if they engaged in activities on behalf of the Union.

About August 12, 2002, the Respondent, by Randy Utsey, at the Respondent's facility, informed employees that they were being terminated because they engaged in protected concerted activities and activities on behalf of the Union.

From about August 7, to about August 8, 2002, certain employees of the Respondent represented by the Union and employed at the Respondent's facility ceased work concertedly and engaged in a strike.

The strike was caused by the Respondent's unfair labor practice of refusing to negotiate for a collective-bargaining agreement with the Union since about July 30, 2002, as described below.

About August 8, 2002, by faxed letter, the following employees, who had engaged in the strike described above, made an unconditional offer to return to their former positions of employment

Henry McGrew
Willie Witherspoon, Jr.
Tracy McGrew
Johnny McGrew
Jamie Dearmon

Since about August 8, 2002, the Respondent has failed and refused to reinstate the employees named above to their former positions of employment, and about that same date, the Respondent terminated these employees.

The Respondent terminated employees Henry McGrew, Willie Witherspoon Jr., Tracy McGrew, Johnny McGrew, and Jamie Dearmon because they assisted the Union and engaged in union activities, and to discourage employees from engaging in union activities.

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act

> All production and maintenance employees, including machine operators, mechanics, packers and cutting room employees employed at the Company's Silas, Alabama facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

On November 6, 1978, the Amalgamated Industrial and Service Workers (Amalgamated) was certified as the exclusive collective-bargaining representative of the unit.

In 1995, Amalgamated merged with the International Ladies' Garment Workers' Union to form the Union. At all times since this merger, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since 1995 the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from February 1, 1999, to January 31, 2002. By supplemental agreement dated January 30, 2002, this agreement was renewed for 6 months through July 31, 2002.

At all times since 1995, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about July 30, 2002, the Respondent has refused to negotiate for a collective-bargaining agreement with the Union.

About August 6, 2002, the Respondent eliminated smoking breaks.

About July and August 2002, the Respondent laid off employees in its trouser line.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent eliminated smoking breaks without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

The Respondent laid off employees in its trouser line without affording the Union an opportunity to bargain with the Respondent about the effects of this conduct.

Since about August 8, 2002, the Union, by letter, has requested that the Respondent furnish the Union with the following information

> (a) A complete list of bargaining unit employees and their respective addresses and telephone numbers;
>
> (b) By individual each employee[']s job assignment showing job seniority and plant seniority;
>
> (c) By individual each employee[']s most recent rate of pay both time work and piece work; and
>
> (d) A copy of the OSHA log 200 for the previous calendar year.

Since about August 22, 2002, the Union, by letter, has requested that the Respondent furnish the Union with a list of any and all employees hired by the Respondent

from July 30 through August 22, 2002, their current positions, hire dates, and rates of pay.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about August 10, 2002, the Respondent, by letter, has failed and refused to furnish the Union with the information requested by it on August 8, 2002.

Since about August 22, 2002, the Respondent has failed and refused to furnish the Union with the information requested by it on August 22, 2002.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. In addition, by discharging employees because they engaged in union and other protected activities, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) of the Act.

Further, by failing and refusing to negotiate for a collective-bargaining agreement with the Union; by failing and refusing to give the Union notice and an opportunity to bargain about the decision to eliminate smoking breaks about August 6, 2002, and its effects; by laying off employees in its trouser line about July and August 2002, without affording the Union an opportunity to bargain with respect to the effects of this decision; and by failing and refusing to provide the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, the Respondent has violated Section 8(a)(5) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and/or (3) by refusing to reinstate and by discharging employees Henry McGrew, Willie Witherspoon Jr., Tracy McGrew, Johnny McGrew, and Jamie Dearmon, we shall order the Respondent to offer these employees full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful failure to reinstate and discharges of Henry McGrew, Willie Witherspoon Jr., Tracy McGrew, Johnny McGrew, and Jamie Dearmon, and to notify them in writing that this has been done.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to negotiate for a collective-bargaining agreement with the Union, we shall order the Respondent, on request, to bargain in good faith with the Union and, if an understanding is reached, to embody that understanding in a signed agreement.

In addition, we shall order the Respondent to rescind, on request, the unlawful unilateral elimination of smoking breaks about August 6, 2002, and to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful actions. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F. 2d 502 (6th Cir. 1071), with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent unlawfully failed and refused to bargain with the Union about the effects of the Respondent's decision to lay off the employees in its trouser line, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. Because of the Respondent's unlawful conduct, however, the laid off employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our Order with a limited backpay requirement designed to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to

the laid off employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968),[3] as clarified by *Melody Toyota*, 325 NLRB 846 (1998).

Thus, the Respondent shall pay its laid off employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the layoffs; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which they were laid off to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the laid off employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with necessary and relevant information it requested on August 8 and 22, 2002, we shall order the Respondent to provide the information to the Union.

ORDER

The National Labor Relations Board orders that the Respondent, Choctaw Manufacturing Company, Inc., Silas, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that doctor-excused and personal day absences will not be accepted for absences in order to prevent employees from engaging in activities on behalf of the Union.

(b) Threatening employees with termination if they engage in activities on behalf of the Union.

(c) Threatening employees with the closure of the Respondent's facility if they engage in activities on behalf of the Union.

(d) Informing employees that their employment was terminated because they engaged in protected concerted activities and activities on behalf of the Union.

(e) Failing and refusing to reinstate unfair labor practice strikers to their former positions upon their unconditional offers to return to work.

(f) Terminating employees because they engaged in union activities and assisted the Union.

(g) Refusing to negotiate for a collective-bargaining agreement with the Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC, as the exclusive collective-bargaining representative of the employees in the following unit

> All production and maintenance employees, including machine operators, mechanics, packers and cutting room employees employed at the Company's Silas, Alabama facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(h) Unilaterally eliminating smoking breaks.

(i) Laying off employees in the trouser line without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct.

(j) Failing and refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit employees.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Henry McGrew, Willie Witherspoon Jr., Tracy McGrew, Johnny McGrew, and Jamie Dearmon, full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Henry McGrew, Willie Witherspoon Jr., Tracy McGrew, Johnny McGrew, and Jamie Dearmon whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful failure to reinstate and discharges of Henry McGrew, Willie

[3] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

Witherspoon Jr., Tracy McGrew, Johnny McGrew, and Jamie Dearmon, and within 3 days thereafter notify them in writing that this has been done, and that the failures to reinstate and the discharges will not be used against them in any way.

(d) On request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees concerning terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement.

(e) On request, rescind the unlawful unilateral elimination of smoking breaks about August 6, 2002, and make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful unilateral change, in the manner set forth in the remedy section of this decision.

(f) On request, bargain with the Union over the effects of the Respondent's decision to lay off the employees on its trouser line, and reduce to writing and sign any agreement reached as a result of such bargaining.

(g) Pay the employees laid off from the trouser line their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the layoffs on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount they would have earned as wages from the date on which they were laid off to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy section of this decision.

(h) Furnish the Union with the information it requested on August 8 and 22, 2002.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, post at its facility in Silas, Alabama, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 8, 2002.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT inform employees that doctor-excused and personal day absences will not be accepted for absences in order to prevent employees from engaging in activities on behalf of the Union.

WE WILL NOT threaten employees with termination if they engage in activities on behalf of the Union.

WE WILL NOT threaten employees with the closure of our facility if they engage in activities on behalf of the Union.

WE WILL NOT inform employees that their employment was terminated because they engaged in protected concerted activities and activities on behalf of the Union.

WE WILL NOT fail and refuse to reinstate unfair labor practice strikers to their former positions upon their unconditional offers to return to work.

WE WILL NOT terminate employees because they engaged in union activities and assisted the Union.

WE WILL NOT refuse to negotiate for a collective-bargaining agreement with the Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC, as the exclusive collective-bargaining representative for our unit employees. The appropriate unit is

All production and maintenance employees, including machine operators, mechanics, packers and cutting room employees employed at our Company's Silas, Alabama facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally eliminate smoking breaks.

WE WILL NOT lay off employees in the trouser line without affording the Union an opportunity to bargain with respect to the effects of this conduct.

WE WILL NOT fail and refuse to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Henry McGrew, Willie Witherspoon Jr., Tracy McGrew, Johnny McGrew, and Jamie Dearmon full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Henry McGrew, Willie Witherspoon Jr., Tracy McGrew, Johnny McGrew, and Jamie Dearmon whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful failure to reinstate and the unlawful discharges of Henry McGrew, Willie Witherspoon Jr., Tracy McGrew, Johnny McGrew, and Jamie Dearmon, and WE WILL, within 3 days thereafter notify them in writing that this has been done, and that the failures to reinstate and the discharges will not be used against them in any way.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees concerning terms and conditions of employment, and if an understanding is reached, embody that understanding in a signed agreement.

WE WILL, on request, rescind the unlawful unilateral elimination of smoking breaks about August 6, 2002, and WE WILL make our employees whole for any loss of earnings and other benefits suffered as a result our unlawful action, with interest.

WE WILL, on request, bargain with the Union over the effects of our decision to lay off the employees on our trouser line, and WE WILL reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the employees laid off from the trouser line limited backpay in connection with our failure to bargain over the effects of our decision to lay them off, as required in the Decision and Order of the National Labor Relations Board.

WE WILL furnish the Union with the information it requested on August 8 and 22, 2002.

CHOCTAW MANUFACTURING CO., INC.